

2003 C13

Lease Agreement

**2003 Timbercorp Almond Project
[Yungera Site]**

Timbercorp Securities Limited

Almond Land Pty Limited

Yungera Site

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000
Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Lease

Date of the Lease:

This Lease is made on

200

Parties to the Lease:

1. **ALMOND LAND PTY LTD**
ACN 091 460 392
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Lessor)

2. **TIMBERCORP SECURITIES LTD**
ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Lessee)

Background

- A. The Lessor is the Purchaser of the Land.
- B. The Lessor wishes to grant a lease of the Land for the Term to the Lessee on the terms and conditions contained in this Lease.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

Almondlot Management Agreement:	the agreement of that name as defined in the Constitution;
Business Day:	any other day other than a Saturday, Sunday or a public holiday

	on which banks are open for business with the public in Melbourne;
Constitution:	the constitution of the Project;
Grower:	the Grower as defined in the Constitution;
GST:	has the meaning given in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended);
GST Law:	the same as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended);
GST Rate:	the rate of GST under the GST Law;
Land:	that part of the land described in the Schedule that will be used for the Project;
Licence and Joint Venture Agreement:	the agreement of that name as defined in the Constitution;
Project:	the 2003 Timbercorp Almond Project;
Responsible Entity:	the responsible entity for the time being under the Constitution, which is currently the Lessee;
Sub-lease:	the sub-lease entered into between the Lessee as Sub-lessor and the Lessor as Sub-lessee in respect of the Land;
Term:	the term of this Lease, as described in clause 3.

1.2 Interpretation

In this Lease, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Lease;
- (i) if a party comprises two or more persons, this Lease binds them jointly and each of them severally
- (j) if any of the persons comprising the Grower is a trustee, this Lease binds that person in its capacity as a trustee and personally; and
- (k) the word "include" or "includes" is to be read as if the expression "(but is not

limited to)" immediately followed such word and the word **"including"** is to be read as if the expression **"(but not limited to)"** immediately followed such word.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this Lease.

2. CAPACITY AND LIABILITY OF THE LESSEE

2.1 Capacity of Lessee

The parties acknowledge that:

- (a) the Lessee has entered into this Lease only in its capacity as Responsible Entity under the Constitution; and
- (b) the Lessee has full, complete and valid authority and power to enter into this Lease under the terms of the Constitution.

2.2 Benefit to Lessee

The parties to this Lease acknowledge and agree that every agreement and condition in this Lease for the benefit of the Lessee benefits the Lessee personally and in its capacity as Responsible Entity under the Constitution.

2.3 Limitation of liability

The parties agree that the Lessee will in no circumstances be required to satisfy any liability owed to the Lessor for breach of any obligation pursuant to or in respect of this Lease out of any funds, property or assets other than the assets held as the responsible entity under the Constitution under the Lessee's control and in its possession and available to be properly resorted to by the Lessee.

3. TERM

The Lessor grants the Lease to the Lessee for a period commencing on the date of this Lease and, subject to clause 12, expiring on 30 June 2023 (or such earlier date as may be determined by the parties).

4. RENT

If demanded by the Lessor, the Lessee must pay to the Lessor an amount of \$1.00 per annum for the term of this Lease.

5. RATES, TAXES AND CHARGES

The Lessor must pay all charges and assessments levied upon the Land including, but not limited to:

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- (a) local authority rates;
 - (b) sewerage rates; and
 - (c) State and other land tax.
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6. USE OF LAND

The Lessee must only use the Land in accordance with the Constitution, the Almondlot Management Agreement and the Licence and Joint Venture Agreement. The Lessee may only use the Land in any other manner with the prior and express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

7. GOVERNMENT REQUIREMENTS

The Lessor must comply with all statutes, ordinances, orders or regulations of any Commonwealth, State or local authority affecting or relating to the Land.

8. INSPECTION OF LAND

The Lessor may, at all reasonable times, enter upon the Land and view its state of repair.

9. QUIET ENJOYMENT

The Lessee may, during the term of this Lease, possess the Land without interruption from the Lessor or any person claiming through it, except to the extent that the interruption is expressly permitted by this Lease.

10. ASSIGNMENTS, SUB-LEASES, MORTGAGES AND LICENCES

10.1 Assignment by Lessee

Subject to clause 10.2, the Lessee must not assign its interest under this Lease or transfer, sublet or part with possession of the Land or any part of the Land without the prior written consent of the Lessor, which consent is not to be unreasonably withheld.

10.2 Lessor consents to Lessee sub-letting

The Lessor consents and authorises the Lessee to sub-lease the Land back to the Lessor under the Sub-lease. Upon the Sub-lease terminating for whatever reason, the Lessor irrevocably authorises and consents to the granting or continuation (or both) by the Lessee of a right to occupy or use the Land granted under the Licence and Joint Venture Agreement.

10.3 Lessee must not mortgage its interest

The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease without prior written consent of the Lessor which must not be unreasonably withheld.

11. DEFAULT AND RE-ENTRY

11.1 Default by Lessee

The Lessor and the Lessee covenant and agree the following are events of default under this Lease:

- (a) the rent remains unpaid for a period of six months after demanded under clause 4; or
- (b) the Lessee commits, permits or suffers to occur any material breach or default in the due and punctual performance of any of its obligations under this Lease.

11.2 Re-entry by Lessor

The Lessor will have the right to re-enter the Land if an act of default in clause 11.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within three months of the Lessee receiving written notice from the Lessor requesting such rectification.

11.3 Re-entry does not prejudice Lessor's rights

Should the Lessor exercise its rights under clause 11.2, it will do so without prejudice to any action or other remedy which the Lessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Lease by the Lessee.

11.4 Lessor discharged from obligations

Where the Lessor exercises its rights under clause 11.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

12. TERMINATION IN WHOLE OR IN PART

- (a) If the Project ends then:
 - (i) this Lease is automatically terminated; and
 - (ii) both the Lessor and the Lessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.
 - (b) Notwithstanding any other provision of this Lease, in the event that a Grower's rights have terminated under the Project ("**Past Grower**") then the Lessor may in its absolute discretion terminate this Lease as it relates to that part of the Land that was occupied or otherwise used by the Past Grower, with the intent that the Lessee will no longer be able to have the benefit of this Lease in respect of that portion of the Land.
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13. LESSOR'S RISK

The Lessor is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessor's property by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

14. LEGAL COSTS

The Lessor must pay the reasonable costs of the Lessee's solicitors of and incidental to the preparation, execution, stamping and registration of this Lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

15. NOTICES

15.1 Form of Notice

Any notice to be given under or in connection with this Lease must be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;
- (b) post or registered or certified mail, or
- (c) fax

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

15.2 Receipt of Notice

Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
 - (b) if posted, then 48 hours after the notice has been properly posted if that falls on a business day, and if not, on the first business day afterwards; and
 - (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.
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16. PROPER LAW

This Lease is governed by and to be interpreted in accordance with the laws of Victoria and the parties to this Lease submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them for determining any dispute concerning this Lease or the transactions contemplated by this Lease.

17. SEVERANCE

This Lease, so far as possible, must be constructed to give validity to all of its

provisions. Any provision found to be prohibited by law will be ineffective so far as it is prohibited without invalidating any other part of this Lease.

18. ENTIRE AGREEMENT

Each party acknowledges that this Lease is not entered into in reliance on any representation or warranty, expressed or implied, whether oral, in writing or contained in any brochure, advertisement or otherwise, except as may be specifically set out in this Lease.

19. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Lease is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Lease, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate in force from time to time.
- (c) The GST payable under paragraph 19(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Lease.
- (d) The right of a Supplier to payment under this clause 19 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Lease, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 19(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

Executed as an Agreement:

EXECUTED by ALMOND LAND)
PTY LTD in accordance with)
section 127 of the Corporations)
Act:)



Signature

Sol Rabinowicz

Full Name

Director

Position Held



Signature

Mark H Pryn

Full Name

Secretary

Position Held

EXECUTED by TIMBERCORP)
SECURITIES LIMITED in)
accordance with section 127 of)
the Corporations Act:)



Signature

Sol Rabinowicz

Full Name

Director

Position Held



Signature

Mark H Pryn

Full Name

Secretary

Position Held

SCHEDULE

DESCRIPTION OF THE LAND

(Clause 1.1)

The land described as "Yungera" in the State of Victoria and being that part of the land delineated in colour on the attached plan, being Crown Allotments 26, 27 and 36 of the land described in Certificate of Title Volume 9481 Folio 888.